

AMENDED IN ASSEMBLY MARCH 15, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1708

Introduced by Assembly Member Gonzalez

January 25, 2016

~~An act to amend Section 784.7 of the Penal Code, relating to crimes.~~
An act to amend Section 647 of, and to add Section 266m to, the Penal Code, relating to disorderly conduct.

LEGISLATIVE COUNSEL'S DIGEST

AB 1708, as amended, Gonzalez. ~~Criminal actions: venue.~~ *Disorderly conduct: prostitution.*

Existing law provides that a person who solicits or agrees to engage in or engages in any act of prostitution is guilty of disorderly conduct, a misdemeanor, punishable by imprisonment in the county jail for no more than 6 months or by a fine not exceeding \$1,000, or by both that fine and imprisonment. Existing law also imposes increased minimum terms of imprisonment for a violation of that provision if a person has previously been convicted of soliciting or agreeing to engage in or engaging in any act of prostitution. Existing law defines "prostitution" to include any lewd act between persons for money or other consideration. Existing law additionally makes prostitution involving soliciting a minor punishable by imprisonment of not less than 2 days and not more than one year and a fine not exceeding \$10,000. Existing law allows a court to, when the interests of justice are best served, reduce or eliminate the mandatory 2 days in the county jail.

This bill would recast those provisions to distinguish between a person who commits prostitution by providing money or other consideration and a person who commits prostitution by receiving money or other

consideration. The bill would provide that prostitution committed by receiving money or other consideration is not a crime for a person under 18 years of age and that it is an affirmative defense that a person engaged in the acts constituting the offense did so due to being a victim of human trafficking. The bill would require a person who commits prostitution by providing money or other consideration to serve at least 72 hours in the county jail. The bill would expand the scope of prostitution involving soliciting a minor to include a situation where the person who was solicited is posing as a minor and the person engaged in the solicitation had specific intent to solicit a minor. The bill would provide that the provisions involving soliciting a minor apply only to persons who commit prostitution involving providing money or other consideration. The bill would require a person who commits prostitution involving soliciting a minor to serve a period of at least 72 hours in the county jail, and would prohibit the court from eliminating the mandatory minimum sentence. The bill would additionally make a person who commits prostitution by providing money or other consideration punishable by a minimum fine of \$1,000. This bill would require those fines to be used by the county where the offense occurred for services for victims of human trafficking.

Existing law provides various penalties for human trafficking and sex trafficking offenses.

This bill would require a person convicted of a human trafficking offense, specified sex trafficking offenses, or certain felony human trafficking offenses, where any part of the violation takes place upon the grounds of, or within 1,000 feet of, a public or private elementary school, vocational, junior high, or high school during the hours that the school is open for classes or school-related programs, or at any time when minors are using the facility, to receive, in addition to any other penalty imposed, punishment of one year in state prison.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law governs venue in criminal actions. If more than one violation of any of specified criminal offenses occurs in more than one jurisdictional territory, the jurisdiction of any one of those offenses,~~

and of any offenses properly joinable with that offense, shall be in any jurisdiction where at least one of the offenses occurred, as specified.

~~This bill would make technical, nonsubstantive changes to those provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 647 of the Penal Code is amended to*
2 *read:*

3 647. Except as provided in subdivision (l), ~~every~~ a person who
4 commits any of the following acts is guilty of disorderly conduct,
5 a misdemeanor:

6 (a) Who solicits anyone to engage in or who engages in lewd
7 or dissolute conduct in any public place or in any place open to
8 the public or exposed to public view.

9 (b) (1) *Who solicits or who agrees to engage in or who engages*
10 *in any act of prostitution and provides money or other*
11 *consideration.*

12 (2) *Who solicits or who agrees to engage in or who engages in*
13 *any act of prostitution and receives money or other consideration.*

14 ~~(b) Who solicits or who agrees to engage in or who engages in~~
15 ~~any act of prostitution.~~

16 (3) A person agrees to engage in an act of prostitution when,
17 with specific intent to so engage, he or she manifests an acceptance
18 of an offer or solicitation to so engage, regardless of whether the
19 offer or solicitation was made by a person who also possessed the
20 specific intent to engage in prostitution. ~~No~~ *An agreement to engage*
21 *in an act of prostitution shall constitute a violation of does not*
22 *violate* this subdivision unless some act, in addition to the
23 agreement, is done within this state in furtherance of the
24 commission of an act of prostitution by the person agreeing to
25 engage in that act. As used in this subdivision, “prostitution”
26 includes any lewd act between persons for money or other
27 consideration.

28 (4) *Paragraph (2) of this subdivision does not apply to a person*
29 *under 18 years of age.*

30 (5) *It shall be an affirmative defense to a violation of paragraph*
31 *(2) that the acts constituting the violation were committed by a*

1 *person as a result of being a victim of human trafficking, as defined*
2 *by Section 236.1.*

3 *(6) Except as provided in subdivisions (k) and (m), a violation*
4 *of paragraph (1) is punishable by imprisonment in a county jail*
5 *for not less than 72 hours and not more than six months and by a*
6 *fine not exceeding one thousand dollars (\$1,000). The fine imposed*
7 *shall be deposited in the treasury of the county in which the offense*
8 *occurred and used by the county to fund services for victims of*
9 *human trafficking. Upon a violation of paragraph (1), a person is*
10 *not eligible for release upon completion of sentence, on probation,*
11 *on parole, on work furlough or work release, or on any other basis*
12 *until he or she has served a period of not less than three days in*
13 *a county jail. In all cases in which probation is granted, the court*
14 *shall require as a condition of probation that the person be*
15 *confined in a county jail for at least three days. The court shall*
16 *not absolve a person who violates paragraph (1) from the*
17 *obligation of spending at least 72 hours in confinement in a county*
18 *jail.*

19 *(c) Who accosts other persons in any public place or in any*
20 *place open to the public for the purpose of begging or soliciting*
21 *alms.*

22 *(d) Who loiters in or about any toilet open to the public for the*
23 *purpose of engaging in or soliciting any lewd or lascivious or any*
24 *unlawful act.*

25 *(e) Who lodges in any building, structure, vehicle, or place,*
26 *whether public or private, without the permission of the owner or*
27 *person entitled to the possession or in control of it.*

28 *(f) Who is found in any public place under the influence of*
29 *intoxicating liquor, any drug, controlled substance, toluene, or any*
30 *combination of any intoxicating liquor, drug, controlled substance,*
31 *or toluene, in a condition that he or she is unable to exercise care*
32 *for his or her own safety or the safety of others, or by reason of*
33 *his or her being under the influence of intoxicating liquor, any*
34 *drug, controlled substance, toluene, or any combination of any*
35 *intoxicating liquor, drug, or toluene, interferes with or obstructs*
36 *or prevents the free use of any street, sidewalk, or other public*
37 *way.*

38 *(g) When a person has violated subdivision (f), a peace officer,*
39 *if he or she is reasonably able to do so, shall place the person, or*
40 *cause him or her to be placed, in civil protective custody. The*

1 person shall be taken to a facility, designated pursuant to Section
2 5170 of the Welfare and Institutions Code, for the 72-hour
3 treatment and evaluation of inebriates. A peace officer may place
4 a person in civil protective custody with that kind and degree of
5 force which would be lawful were he or she effecting an arrest for
6 a misdemeanor without a warrant. A person who has been placed
7 in civil protective custody shall not thereafter be subject to any
8 criminal prosecution or juvenile court proceeding based on the
9 facts giving rise to this placement. This subdivision shall not apply
10 to the following persons:

11 (1) Any person who is under the influence of any drug, or under
12 the combined influence of intoxicating liquor and any drug.

13 (2) Any person who a peace officer has probable cause to believe
14 has committed any felony, or who has committed any misdemeanor
15 in addition to subdivision (f).

16 (3) Any person who a peace officer in good faith believes will
17 attempt escape or will be unreasonably difficult for medical
18 personnel to control.

19 (h) Who loiters, prowls, or wanders upon the private property
20 of another, at any time, without visible or lawful business with the
21 owner or occupant. As used in this subdivision, "loiter" means to
22 delay or linger without a lawful purpose for being on the property
23 and for the purpose of committing a crime as opportunity may be
24 discovered.

25 (i) Who, while loitering, prowling, or wandering upon the private
26 property of another, at any time, peeks in the door or window of
27 any inhabited building or structure, without visible or lawful
28 business with the owner or occupant.

29 (j) (1) Any person who looks through a hole or opening, into,
30 or otherwise views, by means of any instrumentality, including,
31 but not limited to, a periscope, telescope, binoculars, camera,
32 motion picture camera, camcorder, or mobile phone, the interior
33 of a bedroom, bathroom, changing room, fitting room, dressing
34 room, or tanning booth, or the interior of any other area in which
35 the occupant has a reasonable expectation of privacy, with the
36 intent to invade the privacy of a person or persons inside. This
37 subdivision shall not apply to those areas of a private business
38 used to count currency or other negotiable instruments.

39 (2) Any person who uses a concealed camcorder, motion picture
40 camera, or photographic camera of any type, to secretly videotape,

1 film, photograph, or record by electronic means, another,
2 identifiable person under or through the clothing being worn by
3 that other person, for the purpose of viewing the body of, or the
4 undergarments worn by, that other person, without the consent or
5 knowledge of that other person, with the intent to arouse, appeal
6 to, or gratify the lust, passions, or sexual desires of that person and
7 invade the privacy of that other person, under circumstances in
8 which the other person has a reasonable expectation of privacy.

9 (3) (A) Any person who uses a concealed camcorder, motion
10 picture camera, or photographic camera of any type, to secretly
11 videotape, film, photograph, or record by electronic means, another,
12 identifiable person who may be in a state of full or partial undress,
13 for the purpose of viewing the body of, or the undergarments worn
14 by, that other person, without the consent or knowledge of that
15 other person, in the interior of a bedroom, bathroom, changing
16 room, fitting room, dressing room, or tanning booth, or the interior
17 of any other area in which that other person has a reasonable
18 expectation of privacy, with the intent to invade the privacy of that
19 other person.

20 (B) Neither of the following is a defense to the crime specified
21 in this paragraph:

22 (i) The defendant was a cohabitant, landlord, tenant, cotenant,
23 employer, employee, or business partner or associate of the victim,
24 or an agent of any of these.

25 (ii) The victim was not in a state of full or partial undress.

26 (4) (A) Any person who intentionally distributes the image of
27 the intimate body part or parts of another identifiable person, or
28 an image of the person depicted engaged in an act of sexual
29 intercourse, sodomy, oral copulation, sexual penetration, or an
30 image of masturbation by the person depicted or in which the
31 person depicted participates, under circumstances in which the
32 persons agree or understand that the image shall remain private,
33 the person distributing the image knows or should know that
34 distribution of the image will cause serious emotional distress, and
35 the person depicted suffers that distress.

36 (B) A person intentionally distributes an image described in
37 subparagraph (A) when he or she personally distributes the image,
38 or arranges, specifically requests, or intentionally causes another
39 person to distribute that image.

1 (C) As used in this paragraph, “intimate body part” means any
2 portion of the genitals, the anus and in the case of a female, also
3 includes any portion of the breasts below the top of the areola, that
4 is either uncovered or clearly visible through clothing.

5 (D) It shall not be a violation of this paragraph to distribute an
6 image described in subparagraph (A) if any of the following
7 applies:

8 (i) The distribution is made in the course of reporting an
9 unlawful activity.

10 (ii) The distribution is made in compliance with a subpoena or
11 other court order for use in a legal proceeding.

12 (iii) The distribution is made in the course of a lawful public
13 proceeding.

14 (5) This subdivision shall not preclude punishment under any
15 section of law providing for greater punishment.

16 (k) In any accusatory pleading charging a violation of
17 subdivision (b), if the defendant has been once previously convicted
18 of a violation of that subdivision, the previous conviction shall be
19 charged in the accusatory pleading. If the previous conviction is
20 found to be true by the jury, upon a jury trial, or by the court, upon
21 a court trial, or is admitted by the defendant, the defendant shall
22 be imprisoned in a county jail for a period of not less than 45 days
23 and ~~shall~~ *is not be* eligible for release upon completion of sentence,
24 on probation, on parole, on work furlough or work release, or on
25 any other basis until he or she has served a period of not less than
26 45 days in a county jail. In all cases in which probation is granted,
27 the court shall require as a condition thereof that the person be
28 confined in a county jail for at least 45 days. ~~In no event does the~~
29 ~~The court have the power to~~ *shall not* absolve a person who violates
30 this subdivision from the obligation of spending at least 45 days
31 in confinement in a county jail.

32 In any accusatory pleading charging a violation of subdivision
33 (b), if the defendant has been previously convicted two or more
34 times of a violation of that subdivision, each of these previous
35 convictions shall be charged in the accusatory pleading. If two or
36 more of these previous convictions are found to be true by the jury,
37 upon a jury trial, or by the court, upon a court trial, or are admitted
38 by the defendant, the defendant shall be imprisoned in a county
39 jail for a period of not less than 90 days and ~~shall~~ *is not be* eligible
40 for release upon completion of sentence, on probation, on parole,

1 on work furlough or work release, or on any other basis until he
2 or she has served a period of not less than 90 days in a county jail.
3 In all cases in which probation is granted, the court shall require
4 as a condition thereof that the person be confined in a county jail
5 for at least 90 days. ~~In no event does the~~ *The court shall not* have
6 the power to absolve a person who violates this subdivision from
7 the obligation of spending at least 90 days in confinement in a
8 county jail.

9 In addition to any punishment prescribed by this section, a court
10 may suspend, for not more than 30 days, the privilege of the person
11 to operate a motor vehicle pursuant to Section 13201.5 of the
12 Vehicle Code for any violation of subdivision (b) that was
13 committed within 1,000 feet of a private residence and with the
14 use of a vehicle. In lieu of the suspension, the court may order a
15 person's privilege to operate a motor vehicle restricted, for not
16 more than six months, to necessary travel to and from the person's
17 place of employment or education. If driving a motor vehicle is
18 necessary to perform the duties of the person's employment, the
19 court may also allow the person to drive in that person's scope of
20 employment.

21 (l) (1) A second or subsequent violation of subdivision (j) is
22 punishable by imprisonment in a county jail not exceeding one
23 year, or by a fine not exceeding two thousand dollars (\$2,000), or
24 by both that fine and imprisonment.

25 (2) If the victim of a violation of subdivision (j) was a minor at
26 the time of the offense, the violation is punishable by imprisonment
27 in a county jail not exceeding one year, or by a fine not exceeding
28 two thousand dollars (\$2,000), or by both that fine and
29 imprisonment.

30 (m) ~~(1)~~ If a crime is committed in violation of *paragraph (1)*
31 *of* subdivision (b) and the person who was solicited was a minor
32 at the time of the offense, and if the defendant knew or should
33 have known that the person who was solicited was a minor at the
34 time of the offense, *or if the person who was solicited was a person*
35 *posing as a minor and the person engaged in the solicitation had*
36 *specific intent to solicit a minor, the* violation is punishable by
37 imprisonment in a county jail for not less than ~~two days~~ *72 hours*
38 and not more than ~~one year, or year~~ and by a fine not *less than*
39 *one thousand dollars (\$1,000) and not exceeding ten thousand*
40 *dollars (\$10,000), or by both that fine and imprisonment. (\$10,000).*

1 *The fine imposed shall be deposited in the treasury of the county*
2 *in which the offense occurred and used by the county to fund*
3 *services for victims of human trafficking. Upon a violation of this*
4 *subdivision, a person is not eligible for release upon completion*
5 *of sentence, on probation, on parole, on work furlough or work*
6 *release, or on any other basis until he or she has served a period*
7 *of not less than 72 hours in a county jail. In all cases in which*
8 *probation is granted, the court shall require as a condition of*
9 *probation that the person be confined in a county jail for at least*
10 *72 hours. The court shall not absolve a person who is governed*
11 *by this subdivision from the obligation of spending at least 72*
12 *hours in confinement in a county jail.*

13 ~~(2) The court may, in unusual cases, when the interests of justice~~
14 ~~are best served, reduce or eliminate the mandatory two days of~~
15 ~~imprisonment in a county jail required by this subdivision. If the~~
16 ~~court reduces or eliminates the mandatory two days' imprisonment,~~
17 ~~the court shall specify the reason on the record.~~

18 *SEC. 2. Section 266m is added to the Penal Code, to read:*

19 *266m. A person who is convicted of a felony violation of Section*
20 *236.1, for an offense committed against a minor, or Section 267,*
21 *if the violation takes place on the grounds of, or within 1,000 feet*
22 *of, a public or private elementary, vocational, junior high, or high*
23 *school, during hours that the school is open for classes or*
24 *school-related programs or at any time when minors are using the*
25 *facility, shall receive, in addition to any other penalty imposed,*
26 *punishment of one year in the state prison.*

27 *SEC. 3. No reimbursement is required by this act pursuant to*
28 *Section 6 of Article XIII B of the California Constitution because*
29 *the only costs that may be incurred by a local agency or school*
30 *district will be incurred because this act creates a new crime or*
31 *infraction, eliminates a crime or infraction, or changes the penalty*
32 *for a crime or infraction, within the meaning of Section 17556 of*
33 *the Government Code, or changes the definition of a crime within*
34 *the meaning of Section 6 of Article XIII B of the California*
35 *Constitution.*

36 ~~SECTION 1. Section 784.7 of the Penal Code is amended to~~
37 ~~read:~~

38 ~~784.7. (a) If more than one violation of Section 220, except~~
39 ~~assault with intent to commit mayhem, 261, 262, 264.1, 269, 286,~~
40 ~~288, 288a, 288.5, or 289 occurs in more than one jurisdictional~~

1 territory, the jurisdiction of any of those offenses, and for any
2 offenses properly joinable with that offense, shall be in any
3 jurisdiction where at least one of the offenses occurred, subject to
4 a hearing, pursuant to Section 954, within the jurisdiction of the
5 proposed trial. At the Section 954 hearing, the prosecution shall
6 present written evidence that all district attorneys in counties with
7 jurisdiction of the offenses agree to the venue. Charged offenses
8 from jurisdictions that do not have a written agreement from the
9 district attorney shall be returned to that jurisdiction.

10 (b) If more than one violation of Section 273a, 273.5, or 646.9
11 occurs in more than one jurisdictional territory, and the defendant
12 and the victim are the same for all of the offenses, the jurisdiction
13 of any one of those offenses, and of any offenses properly joinable
14 with that offense, shall be in any jurisdiction where at least one of
15 the offenses occurred.

16 (c) If more than one violation of Section 236.1, 266h, or 266i
17 occurs in more than one jurisdictional territory, the jurisdiction of
18 any one of those offenses, and of any offenses properly joinable
19 with that offense, shall be in any jurisdiction where at least one of
20 the offenses occurred, subject to a hearing pursuant to Section 954,
21 within the jurisdiction of the proposed trial. At the Section 954
22 hearing, the prosecution shall present written evidence that all
23 district attorneys in counties with jurisdiction of the offenses agree
24 to the venue. Charged offenses from jurisdictions that do not have
25 a written agreement from the district attorney shall be returned to
26 that jurisdiction. In determining whether all counts in the complaint
27 should be joined in one county for prosecution, the court shall
28 consider the location and complexity of the likely evidence, where
29 the majority of the offenses occurred, the rights of the defendant
30 and the people, and the convenience of, or hardship to, the victim
31 or victims and witnesses.